

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
JUN 10 2019
Clerk, U.S. Courts
District Of Montana
Missoula Division

DAVID LYNN WEIK,

Petitioner,

vs.

T.J. MCDERMOTT, MISSOULA
COUNTY SHERIFF,

Respondent.

CV 19-79-M-DLC-JCL

ORDER

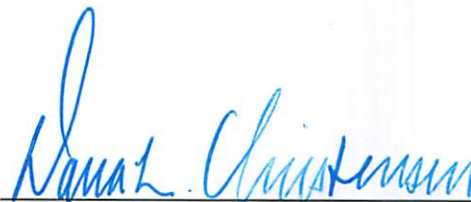
United States Magistrate Judge Jeremiah C. Lynch issued his Order and Findings and Recommendations in this case on April 30, 2019, recommending that the Court dismiss Petitioner David Lynn Weik's petition for writ of habeas corpus. (Doc. 2.) Weik failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Order and Findings and Recommendations (Doc. 2), the Court finds no clear error in Judge Lynch's determination that Weik has not shown that he was exhausted state remedies. Weik's state court revocation proceedings are ongoing, and he must first seek relief through the "remedies available" in the state court system. 18 U.S.C. § 2254(b)(1)(A). The Court further agrees with Judge Lynch that a certificate of appealability should be denied because "jurists of reason would [not] find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, IT IS ORDERED:

- (1) Judge Lynch's Findings and Recommendations (Doc. 2) is ADOPTED;
- (2) Weik's Petition (Doc. 1) is DISMISSED as unexhausted;
- (3) A certificate of appealability is DENIED; and
- (4) The Clerk of Court shall enter judgment of dismissal by separate document.

DATED this 10th day of June, 2019.



Dana L. Christensen, Chief Judge
United States District Court